

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLOYD A. EVANS,

Defendant.

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Case No. 11-00293-01-CR-W-HFS

ORDER

Defendant seeks suppression of evidence where the discovery of a firearm from a concealed place (under bedding) occurred without a search warrant, but allegedly incident to execution of a an arrest warrant. For reasons stated in the report and recommendation (Doc. 46), I DENY the motion. (Doc. 32).

There is no pertinent legal issue. The question is whether the discovery was factually incident to a search for defendant to arrest him. There are cases in which uncovering a firearm hidden under a mattress has resulted in aa successful motion to suppress. Whether the the scene suggested a possible hiding place, as in United States v. Parker, 412 F.3d 1000 (8th Cir. 2005), depends on the credibility of law enforcement witnesses. Judge Hays accepted their testimony. While I recognize that the testimony was of debatable credibility and should be viewed with some grains of salt, given the motivation of the police officers to obtain a conviction and avoid being criticized for mishandling an arrest, the magistrate judge was better able to resolve the question than I am.¹ I accept the credibility finding and adopt the report and recommendation.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

January 28, 2013

Kansas City, Missouri

¹Kicking the heavily covered mattress does support a search for persons rather than contraband.